

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

FINAL AGENCY ORDER 0-01-122

**IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF TRANSNATION
TITLE INSURANCE COMPANY,**

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of Transnation Title Insurance Company (the "Respondent"), pursuant to §§ 10-1-201 to 207, C.R.S. The Commissioner has considered and reviewed the market conduct examination report dated September 7, 2000 (the "Report"), relevant examiner work papers, and all written submissions and rebuttals. The Commissioner enters findings of fact, conclusions and orders as follows:

FINDINGS OF FACT

1. At all relevant times, the Respondent was a corporation licensed by the Division and authorized to conduct the business of title insurance as defined by § 10-11-102(3), C.R.S.
2. In accordance with §§ 10-1-201 to 207, C.R.S., on or about September 7, 2000, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 1999, to December 31, 1999.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners handbook. The Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-204(1), C.R.S.

5. The market conduct examiners prepared a Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined, or as ascertained from the testimony of the Respondent's officers or agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report.
7. The Commissioner has fully considered and reviewed the Report, all of Respondent's submissions and rebuttals, and all relevant portions of the examiner's work papers.

CONCLUSIONS OF LAW AND ORDER

8. Unless expressly modified in this Order, the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue A concerns the following violation: Failure to maintain minimum standards in a record of written complaints. The Respondent shall amend its complaint register to include the omitted information and to comply with the minimal requirements of Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
10. Issue B concerns the following violation: Failure to provide written notification to prospective insureds of the Respondent's general requirements for the deletion of the standard exception or exclusion to coverage related to unfilled mechanic's or materialman's liens and/or the availability of mandatory GAP coverage. The Commissioner amends the recommendations contained in the Report as follows:
 - a. The Respondent shall amend its underwriting guidelines and other procedures necessary to implement the requisite change in order that those procedures and guidelines will provide prospective insureds with written notification of the Respondent's general requirements for the deletion of its general exception or exclusion to coverage for unfilled mechanic's or materialman's liens and GAP coverage.
 - b. The Respondent shall perform an audit of all claims denied, in whole or in part, due to the general exception or exclusion contained in the title policy for unfilled mechanic's or materialman's liens. The period of the audit shall be January 1, 1998, until the date of this Order. If claims were denied due to the general exception or exclusion for unfilled mechanic's liens, Respondent shall provide

coverage for these claims, or make alternative arrangements with the Division, at the discretion of the Division.

11. Issue C concerns the following violation: Misrepresenting the benefits, advantages, conditions or terms of insurance policies by omitting applicable endorsements. The recommendations in Issue C of the Report are amended as follows: Respondent shall demonstrate to the Division that it has amended its procedures so that each policy issued clearly evidences a complete contract.
12. Issue D concerns the following violation: Failure to adopt, print, and/or make available to the public complying schedules of rates, fees and charges for regularly issued title insurance policies and/or regularly rendered closing and settlement services. The Commissioner amends the recommendations contained in the Report to reflect statutory changes imposed by SB 00-106 as follows: Respondent shall ensure that its schedule of rates, fees and amendments are readily available to the public in accordance with § 10-11-118, C.R.S.
13. Issue E concerns the following violation: Failure to obtain written closing instructions from all necessary parties when providing closing and/or settlement services for Colorado consumers. The Commissioner amends the findings, conclusions and recommendations contained in the Report and concludes that no violation occurred. The Commissioner has determined that borrowers in refinance transactions are not ordinarily “necessary parties” under Division regulation 3-5-1(VII)(G) and therefore title entities’ may not be obliged to obtain closing instructions from the borrower.

Further, the Commissioner concludes that title companies, possibly on an industry-wide basis, incorrectly concluded under prior law that title agencies were not permitted to file closing and settlement fees with the Division. Under prior law, title agencies were, in fact, permitted to file closing and settlement fees and other evidence of compliance with closing and settlement requirements with the Division. The Division’s position on underwriter/insurer responsibility regarding closing and settlement requirements is as follows: Where the title agency maintains the schedule of closing and settlement fees, and the underwriter/insurer does not perform the closing and settlement services, the agency, not the underwriter/insurer is responsible for compliance regarding closing and settlement requirements. Where the underwriter/insurer maintains a direct operation, i.e., performs its own closing services, the underwriter/insurer is responsible for compliance with closing and settlement requirements.

14. Issue F concerns the following violation: Failure to follow Respondent’s underwriting procedures and/or guidelines. The Commissioner amends the Report as follows: The Respondent shall amend its underwriting rules to comport with the Respondent’s practices or provide the Division with information demonstrating that it has implemented procedures which will assure that all title policies issued will be in compliance with its written underwriting and rating rules, procedures, guidelines

and/or standards.

15. Issue G concerns the following violation: Issuing title insurance policies without obtaining a certificate of taxes due. The Respondent shall assure that, whenever it issues a title policy in Colorado, Respondent shall obtain a certificate of taxes due or other equivalent documentation for the subject property insured.
16. Issue H concerns the following violation: Making, issuing, and/or circulating written materials which misrepresent the benefits, advantages, conditions, and/or terms of title insurance policies. The Commissioner amends the recommendations contained in the Report to reflect statutory changes imposed by SB 00-106 as follows: The Respondent shall amend the referenced notebooks and rate cards so that materials accurately reflect its rates and fees, maintained or on file with the Division. In addition, Respondent shall adopt and implement procedures which will assure the accuracy of any information or material promulgated with the intent for public dissemination.
17. Issue I concerns the following violation: Failure to provide adequate financial and statistical data of past and prospective loss and expense experience to justify certain title insurance premium rates. The Commissioner amends the recommendations contained in the Report to reflect statutory changes imposed by SB 00-106 as follows: The Respondent shall maintain adequate financial and statistical data of past and prospective loss and expense experience to justify its cited premium rates, fees and charges. The documents shall specifically identify how a reasonable profit provision is incorporated in the development of the Respondent's premium rates, fees and charges.
18. Issue J concerns the following violation: Using rates and/or rating rules not on file with the Division and/or misapplication of filed rates. The Commissioner amends the recommendations in the Report as follows:
 - a. Respondent shall review its procedures related to the filing of rates.
 - b. Respondent shall initiate measures, including: 1) in-service training and education of all employees, 2) exploration of existing technology to automate its rate and fee computation process, and 3) refining and simplifying current rate and fee structures, to address, at a minimum, the rating of policies and their applicable endorsements, and utilization of filed charges for fees for services, including closing and settlement services.
 - c. Respondent shall utilize rates in connection with the issuance of a title policy which accurately reflect the rates on file with the Division, and shall utilize fees and charges, including closing and settlement fees concerning direct operations, which accurately reflect those maintained by Respondent pursuant to SB 00-106.

- d. With respect to closing and settlement costs, Respondent shall comply with Division regulation 3-5-1, § V, except as otherwise required by SB 00-106.
 - e. Respondent shall conduct an audit of rate, premium, charge and fee calculations for calendar year 2001. Respondent may employ an independent auditing firm to conduct the audit. This audit shall consist of an examination of 100 randomly-selected files regarding policies and commitments quoted and written during the calendar year, along with any related closing and settlement services provided. Respondent shall prepare a written report summarizing the audit. Relevant officers of the Respondent or the independent auditing firm shall certify that they have reviewed all elements of the audit. Respondent shall submit the audit reports to the Division no later than March 31, 2002.
 - 1) If the audit reveals an error ratio in excess of 5%, Respondent shall continue to perform annual audits and submit the reports in the manner described in subparagraph (e) above until Respondent can demonstrate compliance to the satisfaction of the Division.
 - 2) An error occurs when Respondent fails to use the rates, fees or charges on file with the Division or maintained pursuant to SB 00-106 whether the rates, fees or charges are in excess of or less than the filed rates or maintained schedule of fees.
 - 3) "Error ratio" is the number of files in which a material error is made, divided by the total number of audited files.
 - 4) "Material error" means an error of ten dollars (\$10) or more.
19. Issue K concerns the following violation: Engaging in unfairly discriminatory rating practices and adopting rate rules and/or premium charges that are excessive, unfairly discriminatory and/or adopting rating rules or premium charges that improperly favor producers of title insurance business. The Commissioner amends the findings, recommendations and conclusions in the Report and concludes that no significant violation is readily apparent from the findings.
20. Issue L concerns the following violation: Failure to maintain adequate policy records and/or other information necessary for reconstruction of the rating and/or underwriting of title policies issued by the Respondent. The Respondent shall review its procedures pertaining to record maintenance to ensure future compliance with Colorado insurance law. Respondent shall amend and implement its record keeping and file maintenance practices and procedures to assure underwriting files will be maintained so that each file contains declaration pages, endorsements, riders, guidelines or manuals associated with or used for rating or underwriting title policies and any other information necessary for reconstruction of the rating and underwriting of policies.

21. Issue M concerns the following violation: Failure to file a schedule of fees and charges for closing and settlement services with the Division and/or using closing and settlement service fees and charges not on file with the Division. The Commissioner amends the Report as follows: The Commissioner concludes that title companies, possibly on an industry-wide basis, incorrectly concluded under prior law that title agencies are not permitted to file closing and settlement fees with the Division. The Respondent shall review and implement its procedures relating to the filing of rates and rating rules which will assure future compliance with the filing requirements of Colorado insurance law.

Under prior law, title agencies were, in fact, permitted to file closing and settlement fees and other evidence of compliance with closing and settlement requirements with the Division. The Division's position on underwriter/insurer responsibility regarding closing and settlement requirements is that where the title agency files the closing and settlement fees, and the underwriter/insurer does not perform the closing and settlement services, the agency, not the underwriter/insurer is responsible for compliance regarding closing and settlement requirements. Where the underwriter/insurer maintains a direct operation, i.e., performs its own closing services without an agency, the underwriter/insurer is responsible for compliance with closing and settlement requirements.

Accordingly, Respondent shall amend its procedures to ensure that it maintains a schedule of closing and settlement fees for its direct operations pursuant to SB 00-106, and that it uses these schedules when conducting closing and settlement services.

22. Issue N concerns the following violation: Failure to adopt and/or implement reasonable standards for the prompt investigation of claims. The Commissioner amends the recommendations contained in the Report as follows: The Respondent shall review all its rules, manuals and procedures relating to the investigation and handling of claims and adopt reasonable procedures to assure the Division that all claims will be acknowledged, handled, adjusted, and/or investigated in accordance with Colorado insurance law, including when Respondent delegates these functions to a third party.

The Respondent shall review, amend, reform and/or update its claims manual and current claims handling procedures to accurately reflect current Respondent claims handling procedures. Any update or amendment of the manual shall incorporate changes in its claims operation systems, software, and programs pertinent to processing, handling, and documenting claims. Corrected sections of the Respondent's claims manual shall be submitted to the market conduct section of the Division.

23. Issue O concerns the follow violation: Failure to acknowledge and act promptly to communications with respect to claims arising under insurance policies. The

Commissioner amends the recommendations contained in the Report as follows: Respondent shall review and amend its procedures and those of its authorized agents relating to the handling of claims to ensure that all claims arising under insurance policies, whether received by authorized agents or directly by the Respondent, will be acknowledged and acted upon in accordance with statutory requirements.

24. Issue P concerns the following violation: Failure to produce and/or maintain adequate claims records for market conduct review. The Respondent shall review its procedures pertaining to record maintenance in the context of claims handling. Respondent shall also amend its claims manual and implement procedures which will assure claim files will be maintained so as to clearly show the inception, handling and disposition of each claim and generally assure future compliance with the requirements of Colorado insurance law.
25. Issue Q concerns the following violation: Failure to file a Colorado uniform financial reporting plan and/or failure to submit an annual filing of sufficient financial data to justify Respondent's rates. The Commissioner amends the recommendations contained in the Report to reflect statutory changes imposed by SB 00-106 as follows: Respondent shall amend its procedures to ensure compliance with the filing requirements contained in § 10-11-118, C.R.S.
26. Pursuant to § 10-1-205(3)(d), C.R.S., Respondent shall pay a civil penalty to the Division in the amount of fifteen thousand two hundred fifty and 00/100 dollars (\$15,250.00). This fine represents a combined fine for the cited violations of Colorado law.
27. All requirements with this Order shall be completed within thirty (30) days of the date of this Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Order. Copies of any rate and form filings shall be provided to both the rate and forms section and the market conduct section. All audit reports must be received within ninety (90) days of the Order, with a summary of the findings, including any and all monetary payments to covered persons.
28. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions, as provided for by law.
29. Copies of the examination, the Respondent's explanation, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this

Order, subject to the requirements of § 10-1-205, C.R.S.

WHEREFORE: It is hereby ordered that the findings and conclusions contained in the final Report dated September 7, 2000, are hereby adopted as may be modified by this Order, and are filed and made an official record of this office. The above Order is hereby approved this 22nd day of December, 2000.

A handwritten signature in black ink, appearing to read "Kirven" followed by a stylized circular flourish.

William J. Kirven III
Commissioner of Insurance